

**Before the
Federal Communications Commission
Washington DC 20554**

In the matter of)
Acceleration of Wireless Broadband Deployment by) WT Docket No. 17-79
Removing Barriers to Infrastructure Investment)
)

COMMENTS OF THE CITY OF AUSTIN, TEXAS

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Rondella Hawkins
Telecommunications & Regulatory Affairs Officer
City of Austin
PO Box 1088
Austin TX 78767
512-974-2422
rondella.hawkins@austintexas.gov

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INTRODUCTION

The City of Austin (“the City” or “Austin”) files these comments in response to the Notice of Proposed Rulemaking (NPRM) and Notice of Inquiry (“NOI”), released on May 10, 2017, in the above-entitled proceeding. Through these comments, the City seeks:

- To provide the Commission with basic information regarding our acceleration of wireless broadband deployment through our local right-of-way, facility, zoning, and permitting management practices, and
- To illustrate that the Commission’s proposals to broadly preempt local authority are solutions in search of a problem that could impose significant harm on communities and local taxpayer investments in public rights-of-way and other infrastructure.
- To associate ourselves with the Comments, including the accompanying research of the Smart Communities and Special Districts Coalition.¹

The City would remind the Commission that it sought comments on these issues earlier this year and the City respectfully asks that the Commission incorporate by reference the unprecedented number of local government comments filed in that docket by individual

¹ Comments of Smart Communities and Special Districts Coalition (filed June 15, 2017)

communities such as Austin², coalitions such as the Smart Communities Coalition³, states leagues such as the Texas Municipal League⁴ and national associations of local government officials.⁵

Municipalities are not a barrier to broadband deployment but rather have played a significant role in its successful deployment through efforts in past decades to require citywide build-out of broadband wireless system. Indeed, broadband deployment is highest in cities, even though cities have regulations designed to protect installation of facilities in public rights-of-way and zoning to ensure safe and appropriate tower siting. The idea that broad federal preemption of longstanding local authority and substantial changes to longstanding federal laws are needed to facilitate wireless infrastructure deployment is not supported by the record. Broadly, this proposed rulemaking would cripple local government authority to manage valuable public property, protect public safety, preserve the aesthetic appeal of our communities, and protect the interests of other property owners.

Local rights-of-way management and zoning provide important and legitimate public benefits including:

- Safety
- Ensuring that public rights-of-way are safely and efficiently available to all users;
- Ensuring that multiple rights-of-way uses can coexist safely and efficiently;
- Traffic management;
- Protection of public investment in streets, sidewalks and alleys and

² Comments of Austin in WT Docket 16-421 filed March 8, 2017

³ Comments of Smart Communities in WT Docket 16-421 filed March 8, 2017

⁴ Comments of Texas Municipal League in WT Docket 16-421 filed March 8, 2017

⁵ Comments of National League of Cities et al in WT Docket 16-421 filed March 8, 2017

- Ensuring that adjacent property owners are not adversely impacted.

Austin eagerly supports the deployment of the most advanced communications infrastructure in our community including the deployment of DAS and other microcell infrastructure to extend broadband to all people and households and provide the backbone for the “Internet of things.” At every development stage of new wired and wireless communications technology, the City has worked closely and in good faith with providers to accommodate infrastructure deployment in a manner that benefits all users and meets the diverse needs and goals of our community.

The Commission should not interfere with local policies in these areas. Austin has developed considerable expertise applying its policies to protect and further public safety, economic development, and other community interests. By adopting one-size-fits-all rules in these areas, the Commission could disrupt this process at substantial cost to our taxpayers and to our local economy. We believe that a basic respect for federalism, a fair reading of the Constitution and the Communications Act, and an honest assessment of the Commission’s limited expertise on local land use matters all point to the same conclusion: this is no place for federal regulation.

There is no evidence that our policies or fees with respect to placement of facilities in the rights-of-way or on City property (such as water towers) have discouraged broadband deployment. On the contrary, Austin has successfully managed its property to encourage deployment of several broadband networks to date. As a result, broadband service is available to households and businesses throughout communities in our jurisdiction. Our community

welcomes broadband deployment, and our policies allow us to work with any company willing to provide service.

We believe our policies have helped to avoid problems and delays in broadband deployment by ensuring that broadband deployment goes smoothly for both the providers who follow the rules and the larger community. On the other hand, we also know that many entities seeking access to our rights-of-way and facilities would prefer to live without rules or regulations, to the great detriment of other users, abutting landowners, commuters, and the general taxpayer.

In the following paragraphs, the City will attempt to respond to some of the Commission's specific questions in this proceeding.

Notice of Proposed Rulemaking

Question: Are there ways in which applicants are causing or contributing to delay in processing of their siting applications? Further, are there steps that the industry can take outside the formal application review process that may facilitate or streamline such review?

In the City of Austin, most delays are due to incomplete paperwork and failures to respond to requests for additional information.

Most applicants in Austin are well prepared and submit complete paper work and follow up quickly on requests for additional information. The best applicants have worked with the City and the impacted community to resolve issues ahead of time. Applicants should strive to do so for their own benefit as well as the benefit of the community.

Questions re: deemed granted remedy for missing shot clock deadlines.

The City believes that the Commission is treading on dangerous ground in this section of the proposed rule. Simply put, the Commission appears to be heading in the direction of creating a special class of right-of-way and public property user that is completely exempt from all local zoning, land use, and safety regulation. The Commission appears poised to do this without regard to other legitimate public policy goals, local needs and conditions, public safety, and the legitimate interests of other property owners and users of public rights-of-way.

In addition, the Commission appears intent on requiring local taxpayers and other users of public rights-of-way to subsidize a profitable industry by giving that industry unfettered access to valuable public property. The City is hard pressed to think of another industry that the federal government has chosen to force local governments to subsidize.

The City is also deeply concerned that the Commission is proposing to exacerbate this injustice by limiting local government access to the courts for a fair hearing of legitimate disputes that involve important public policy and public safety considerations with significant impacts on the communities and citizens that we serve.

Notice of Inquiry

Questions re: the intersection of sections 253(a) and 332(c)(7).

The City would assert that the Commission is asking the wrong questions in paragraph 65. Despite the varying court interpretations of “having the effect of prohibiting” the basic fact is that through these two sections Congress’ main intent was to protect local government authority to manage public rights-of-way and to collect compensation for their use and management,

provided they did not discriminate against any applicants. The manner in which the Commission has framed these questions makes it clear that the Commission is looking for technical and legal loopholes to override congressional intent and allow a single special treatment not enjoyed by any other users of public rights-of-way and public property. The City would argue that the Commission is starting from an assumption that is simply not true. The record clearly shows that deployment of telecommunications infrastructure has proceeded apace and has been especially robust in cities.

In response to the question in paragraph 66, the City urges the Commission to refrain from setting national, one-size-fits-all aesthetic standards. The presumption in this question is that cities abuse aesthetic concerns as a means to discriminate against individual applicants, a premise that is simply not true. The United States is a large, complex, and diverse country. A federal agency that purports to be able to set aesthetic standards for the entire country would indeed be a bold and ambitious one!

The question in paragraph 68 appears to imply that recurring charges are a method by which cities seek to enrich themselves and appears to ignore or disregard the fact that public rights-of-way, utility poles, and other public structures have ongoing maintenance costs that should be borne in a fair and equal manner by all users.

Conclusion

The City of Austin urges the Commission to proceed cautiously and in a manner that recognizes that value of collaborative and cooperative approach to wireless facility siting that we use in Austin. Our collaborative and cooperative model for colocation of wireless facilities (and

wireless facility siting in general) has achieved widespread deployment and coverage throughout Austin *and* protected public safety, the environment, our historic neighborhoods, public rights-of-way users and the interests of neighborhoods and adjacent property owners.

The City of Austin urges the Commission to conclude that right-of-way and facility management and charges are not impeding broadband deployment. As indicated above, in Austin, our policies and procedures are designed to protect important local interests, and have done so for many years. There is no evidence that the policies have impaired any company from providing broadband service here, and there are many reasons to believe that federal regulations would prove costly and disruptive to our community.

Indeed, the City of Austin urges the Commission not to adopt regulations in this matter. Instead, we urge the Commission to update its standards and best practices guidance and to facilitate the sharing of said best practices among local governments.